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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 604

SUSIE V. WATWOOD, *Petitioner*

v.

REAL ESTATE COMMISSION OF
THE DISTRICT OF COLUMBIA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUSIE V. WATWOOD, *Petitioner pro se*
5112 MacArthur Boulevard, N. W.
Washington, D. C. 20016
Telephone 362-3246

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, Civil Division, entered in the above entitled cause on April 8, 1964, denying petitioner's petition for an allowance of an Appeal from the Judgment of the District of Columbia Court of Appeals, entered January 8, 1964, affirming the Order of the Real Estate Commission of the District of Columbia, entered July 17, 1963, suspending petitioner's real estate brokers license upon the Commission's findings of facts and conclusions of law that petitioner's conduct violated Section 45-1408 (g) and 45-1408 (h) of the D.C. Code, 1961, ed.; and

from the denial of petitioner's petition for reconsideration and reconsideration en banc, entered May 22, 1964.

OPINIONS BELOW

The Opinions of the United States Court of Appeals for the District of Columbia Circuit, entered April 8, 1964; and May 22, 1964 are in the Appendix p. 6a and 7a.

The Opinions of the District Court of Appeals, entered January 8, 1964; and January 29, 1964, 196 At. 2d 635 is printed in the Appendix p. 1a and 7a.

The Real Estate Commission's Findings of Facts, and Conclusions of Law, p. 11; Order dated July 17, 1963, is printed in the Appendix, p. 5a.

JURISDICTION

The Judgment of the United States Court of Appeals, without written opinion, was entered April 8, 1964. Petitioner filed a timely Motion for Reconsideration and Reconsideration en banc. This was denied without written opinion on May 22, 1964. Petitioner filed a timely motion in this Court for an extension of time to October 19, 1964 to file Petition for Writ of Certiorari. This was granted August 21, 1964. The Jurisdiction of this Court rests on 28 U.S.C. Sec. 1254 (1).

QUESTIONS PRESENTED

The Real Estate Commission of the District of Columbia, after causing years of harassment of petitioner and interference in her business operations by the Commission's Investigators, the Police and District Corporation Counsel, found petitioner's conduct in violation of the provisions of Section 45-1408 (g) and 45-1408

(h) of the D.C. Code, 1961 ed., because she defended herself in a Civil Action filed by one Cora Eva Everson, a former client, who claimed damages for mismanagement of three properties in the amount of $3,000.00 ($2,966.25); and because petitioner counter-claimed for a sales commission due her from Everson in the amount of $1,212.50 for the sale of one of the properties. The Commission, at a public hearing, retried the Civil Action, claimed that petitioner's defenses and counter-claim though in good faith were "frivolous", violated Section 45-1408 (g) and 45-1408 (h), D.C. Code, 1961 ed. and suspended her real estate brokers license for thirty days as "punishment". The Commission's findings, conclusions and judgment are incapable of being supported by the record.

The Federal Question is:

1. The Real Estate Commission's actions go beyond the power vested in them under Section 45-1408, D.C. Code, 1961 ed., illegally deprives petitioner of her property, her real estate brokers license; and places her future life and business under a criminal connotation of dishonesty not supported by the record, therefore is repugant to the First, fourth and Fourteenth Amendment to the United States Constitution.

The Federal Question is:

2. Whether Petitioner's rights to equal Protection of the law under the Fourteenth Amendment of the United States Constitution has been denied.

The Federal Question is:

3. Whether the United States Court of Appeals' refusal to grant petitioner's petition for an appeal, which left standing an illegal action of the Real Estate Commission under Sec. 45-1408 D.C.

Code, 1961 ed., depriving her of her property, her real estate brokers license; and placing her life and business under an connotation of dishonest which is incapable of being supported by the record is in violation of her constitutional right to due process of law, and is therefore, repugnant to the First, Fourth and Fourteenth amendment to the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitutional provisions involved are:

The First Amendment:

"Congress shall make no laws . . . abridging the freedom of speech, or . . . . the right of the people . . . . to petition the Government for a redress of grievance."

The Fourth Amendment

"The right of the people to be secure in their persons, papers and effects, against unreasonable searches and seizures, shall not be violated . . ."

The Fourteenth Amendment; Sec. (1)

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."* (Italics ours.)

STATEMENT OF THE CASE

Beginning in June 1956 petitioner sold one Cora Eva Everson a property, 2822 Wisconsin Avenue, N. W., then entered into a written agreement to manage said property (R. 74) for a five percent commission on the gross rents collected, which commission was to be de-

ducted from the rents as collected. Petitioner was to place tenants, collect rents, make minor repairs, pay miscellaneous operating expenses, and on approval of Everson, to pay other bills from any proceeds of rents collected. The balance, if any, was to be remitted with the monthly statement, or, if there were not enough rents to pay expenses and repairs, Everson was to give petitioner the additional monies needed, or was to pay the bills direct herself. *Petitioner was not obligated to pay any bills or mortgage payments from her own* funds. *However, on a number of occasions petitioner did advance her personal funds to pay bills and mortgage payments due, for Everson.*

In December 1956 petitioner sold Everson another property, 2816 Wisconsin Ave., N. W., and managed that property also under the terms of the original management agreement, supplemented orally and by written notes of instruction from Everson from time to time, including holding and accumulating rents to pay monthly and quarterly (B. F. Saul's first mortgage was paid quartely) mortgage payments and outstanding bills for which invoices had not been received at time of monthly accounting.

Although both properties were bringing in good income, in the fall of 1958 Everson ordered petitioner to sell both properties and to find her a multiple unit building for tenants "of average means" instead of "Diplomats". The clause in the management contract "Said agent is to receive a commission of 5% of the gross rentals collected and is to deduct and withhold same from rents collected" was orally amended to include a 5% commission of the selling price of properties 2816 and 2822 Wisconsin Ave. Petitioner secured

a buyer for 2822 Wisconsin Ave. on which Everson paid a five percent commission.

Petitioner found a ten unit, four year old, brick apartment building located at 2905-2907 Fairlawn Ave. S. E., owned by a William Klinedinst, which Everson, after examining the listing card which included a commission of 5% of the selling price, and a thorough inspection of the building, bought. Klinedinst, the seller, paid petitioner a five per cent commission on the sale with the full knowledge and consent of both parties. When petitioner submitted Everson's contract of purchase to Klinedinst he declined the contract as to the terms of the second trust provision, but made a counter offer as follows:

> "I will accept the contract on the reverse side hereof provided that if there is a 2nd trust it will be paid in full on or before April 20, 1959." (R. 91)

Petitioner advised Klinedinst that she was management agent for Everson; was afraid Everson might be caught short of cash on April 20, 1959 if her property 2816 Wisconsin Ave. had not been sold, therefore could not advise her to accept his counter-offer. She tried to get him to purchase the Wisconsin Ave. property. This he would not do. However, after considerable wrangling over the purchase price, including petitioner's commission of 5% to be paid by Everson, Klinedinst agreed to give Everson an option in reverse as follows:

> "If the purchaser's property located at 2816 Wisconsin Ave. N. W. has not been sold by that time" (April 20, 1959) "I agree *to purchase* said property for $24,250 using the unpaid balance of the 2nd Trust as full or a part of the cash down payment." (R. 91)

The $24,250 was the amount previously agreed to between Everson and petitioner as the minimum price including petitioner's commission of 5%, she would take. Everson accepted this counter offer option in reverse, by signing it. This was not a trade and this property did not appear on the settlement sheet for the Fairlawn property (R. 94). Petitioner continued to offer this property for sale to the general public, but got no offers to equal the $24,250 option. The tenants vacated February 18, 1959 and returned to their native country. Petitioner proceeded to manage the Fairlawn property under the original agreement orally amended and by written notes from Everson from time to time, paying expenses of both properties from rents proceeds of the Fairlawn property interchangeable as necessary.

Everson, against petitioner's advice, refused to exercise her option to sell to Klinedins' 2816 Wisconsin Ave. The house was badly in need of decorating and Everson refused to decorate. Because of its condition and the fact that it was open for sale it could not be rented at a profitable price.

Everson was getting into hot water because of her mortgage payments being past due. Both B. F. Saul, first mortgage holder and Klinedinst 2nd trust holder, who since Everson had refused to exercise her option to sell to him, was no longer obligated to purchase 2816 Wisconsin, were threatening foreclosure unless she paid them. There was not sufficient rents on hand to pay these items and the operating expenses, heating costs being high during the winter months.

On May 28, 1959, one month, eight days after her option to sell had expired, Everson, after petitioner

showed her a statement from B. F. Saul, asked petitioner to see if she could persuade Klinedinst to still buy 2816 Wisconsin. Although difficult to do, petitioner got him to sign a purchase contract that day for the exact same amount of $24,250 on the same terms as called for in the expired option. Petitioner then submitted the contract to Everson, at which time Everson refused to sign the contract, saying she had been advised since she gave the instruction not to. Petitioner asked her what she was going to do about the past due B. F. Saul mortgage payment. Everson threw the statement at petitioner. On May 30, 1959 petitioner received a letter from Everson dated (R. 73) May 28, 1959 cancelling the management agreement, effective ninety days from date. On June fourteenth petitioner received a letter from one Leonard Abrams, a speculator-broker, competitor of petitioner, advising that he was attorney for Everson and instructing petitioner, to cease management immediately and to give an accounting. Without petitioner knowing it, another management agent had already taken over. Petitioner ceased immediately on June 14th to further manage the property. Knowing Abrams had persuaded Everson to cancel the management agreement so he could get the commission in the form of attorney fees on the sale of 2816 Wisconsin Ave. $1,212.50, petitioner billed Everson for the commission; proceeded to pay all outstanding operating expenses from rents on hand, rendered a final statement to Everson. After operating expenses as provided in the management contract had been paid there was a balance due Everson of $566.25. Everson refused to pay the commission of $1,212.50. Petitioner empounded the $566.25 and request Everson to pay the balance of $646.25. Everson went to settlement with Klinedinst (R. 92 & 93) on 2816 Wisconsin

Ave. on the same terms provided in contract produced by petitioner. Everson brought suit charging petitioner with "Mismanagement (R. 80 & 81) converting funds during the month of March, April, May and June, 1959 to her own use instead of paying obligations of the plaintiff in the amount of $566.25; damages in the amount of $2,400, and costs." Petitioner counterclaimed (R. 82, 85) for a commission due of $1,212.50.

Petitioner did not use the $566.25, but retained it in an escrow account Everson, through Abrams, also filed charges against petitioner with the Real Estate Board, Internal Revenue Service, the Real Estate Commission, among others. Petitioner was required to answer over 87 questions in a series of discovery actions, motions and counter motions. The Real Estate Commission ordered petitioner to supply them with copies of all documents, pleadings, exhibits, defenses, and accounting records of every kind during the pendency of the Civil Action. Petitioner complied, even though her cause was seriously prejudiced by the Commission's cooperation and collusion with Everson, Abrams, and their investigators. Commission Secretary, William R. Downing constantly telling petitioner that "If you don't win I am going to suspend your license." Petitioner had to defend a double suit, Everson's and the Real Estate Commission during the entire pendency of the civil action.

Petitioner was subjected to constant harassment, investigation by the Commission's investigators, who instigated other suits against petitioner, the Police who framed traffic charges, and the Corporation Counsels for the District of Columbia, who forced petitioner through a sanity inquisition when she appeared to defend a traffic case, had her incarcerated in a maxi-

mum security ward at D. C. General Hospital (See *Constitutional Rights and The Insanity Laws, Incarcerating the Sane*, by Susie V. Watwood which is incorporated hereby as a supplement to the Record on Appeal, and, petitioner's sworn affidavit appendix, p. 13.

Just before trial of the Civil Action petitioner's counsel withdrew from the case, prejudicing the case and causing petitioner to have to act as her own counsel. The trial court refused to give petitioner's requested instruction to the Jury that, "If the jury finds that defendant Watwood was the procuring cause of the sale of 2816 Wisconsin Avenue, N. W. to Klinedinst, then she would be entitled to the commission as a matter of law."; ordered the jury to find in Everson's favor on the $566.25. Everson's stacked jury of fellow government employes found in her favor fifty dollars damages and in her favor on the commission. (*Watwood* v. *Everson,* D.C. Mu. App. 181 A. 2d 469, 1962). Petitioner's petition to the United States Court of Appeals was denied without written opinion. During the appeal, in *addition to the escrow of $566.25 petitioner had a cash supercedeas bond on appeal of $650.00* (R. 15). Petitioner gave Everson the full judgment and costs on the same day of the denial of appeal; October 18, 1962. On February 5, 1963, shortly after petitioner, as Vice President of a Citizen's Council gave testimony at a Budget hearing at the District Commission, and the day after she gave a report of the budget hearing at a Citizen's Association meeting at which one of the Real Estate Commissioners, Frank M. Doyle, (Real Estate Broker, vicious competitor of petitioner) the Real Estate Commission filed charges and ordered petitioner to a public hearing, retried the Civil Action, devoting most of the hearing and the Corporation's

Counsels arguments to the proposition of petitioner's "lack of good faith," and the "frivolousness" of her defenses and counter-claim for the commission, claiming petitioner had no right to a commission. The Commission found petitioner's conduct in violation of the real estate code as follows:

> "During the months of March, April, May and June of 1959, Miss Watwood, while acting pursuant to the aforesaid agreement, instead of making payments of the aforesaid obligations of Mrs. Everson and then remitting the balance to Mrs. Everson as per said agreement, did convert to her own use the sum of $566.25"
>
> "On or about July 12, 1959, Mrs. Everson cancelled the aforesaid management agreement and requested a final accounting by Miss Watwood and remittance of said $566.25. Miss Watwood refused to make said accounting for the aforesaid amount and did so fail and refuse until on or about October 17, 1962. Until said accounting was made, Miss Watwood did in fact use said monies for her own personal purposes."

The Commission's Conclusions of Law was:

> "Susie V. Watwood's aforesaid conduct is in violation of the provisions of Section 45-1408 (g) and Section 45-1408 (h), D. C. Code, 1961 ed."

DECISION

> "The Real Estate Broker's license of Susie V. Watwood shall be suspended for a period of (30) days"

Petitioner petitioned the District of Columbia Court of Appeals for a review (RA). This Court, in a written opinion (R. 108) *January 8, 1964, 196 At. 2d 635* sustained the Real Estate Commission's findings. This

Opinion is silent on the most important questions, is erroneous, misleading and reads into the record phantom facts not supported by the record. Petitioner moved (R. 110) the Appellate Court to correct statement of facts in opinion and/or to modify judgment accordingly. This motion was denied, (R. 119). Petitioner then petitioned the United States Court of Appeals for allowance of appeal, this was denied (Appendix) without written opinion April 8, 1964. Petitioner petitioned for a reconsideration and for reconsideration en banc (R. 17). This was denied May 22, 1964 (Appendix). From this denial petitioner now brings this petition for a writ of certiorari.

STATUTES INVOLVED

Section 45-1408 D. C. Code, 1961 ed., Act of Congress Aug. 28, 1937, 50 Stat. 793, Ch. 760 Sec. 8; as amended Aug. 10, 1939, 53 Stat. 1356, Ch. 66 Sec. 8.

"The Commission . . . . shall have the power to suspend . . . . any license issued under the provisions of this chapter, at any time where the licensee has by false or fraudulent representation obtained a license, or where the licensee, in performing or attempting to perform any of the acts mentioned herein, has . . . .

(g) failed, within a reasonable time to account for or to remit any money, valuable documents, or other property coming into his possession which belong to others;

(h) demonstrated such unworthiness or incompetency to act as a real estate broker or real estate salesman or a business chance broker or a business chance salesman as to endanger the interests of the public; . . . ."

SUMMARY OF ARGUMENT

The power of the Real Estate Commission to revoke and suspend licenses of real estate brokers does not authorize it to assume unwarranted police power over the administrative operations of brokers, set commissions rates, interpret contracts terms, order brokers to cancel contracts, decide whether a broker can defend, or prosecute a civil action, take sides with one broker against another in a purely business transaction, encourage a complaining client to cancel his contract, send groups of investigators, police and corporation counsels out to derogatorily discuss a broker with clients and competitors; or to punish a broker for honestly trying to collect a commission, or to judge civil liability and then suspend the brokers license as punishment. The commission has done all this to petitioner. The action of the commission was conceived in malice. It cannot be supported by the record. Its suspension of petitioner's real estate broker's license because she defended a civil action against her and sought honestly to collect a commission due is in violation of petitioner's Constitutional right "to petition the Government for a redress of grievance" under the First Amendment.

The Commission's "Police State" action against petitioner has violated her Constitutional right "to be secure in her person, papers and effects, against unreasonable searches and seizures," under the Fourth Amendment.

The Commission's "Police State" actions in investigating petitioner, aiding and abetting Everson and Abrams, conniving with witnesses to secure false testimony, twisting and distorting facts to gratify malice in the name of a Statute of the Government as an ex-

cuse to deprive petitioner of her real estate license violates her Constitutional right to "equal protection of the law" under the Fourteenth Amendment.

This is the first instance in the District of Columbia of the revocation or suspension of a broker's license when there is admittedly no fraud or dishonesty. This is clearly contrary to the statute, the Real Estate and Business Chance Broker's License Act, which has never been construed by the United States Court of Appeals for the District of Columbia, or by this Court.

ARGUMENT

The Court below has decided a question of substance not heretofore determined by this Court, great damage has been done thereby to the personal life and business of the petitioner because of the criminal connotation of dishonesty which is incapable of being supported in the record, where admittedly no fraud or dishonesty exists. The questions involved the jurisdiction and authority of the Real Estate Commission to judge issues of civil liability and unwarranted interference in a broker's business operations under its license revocation and suspension powers. What restraints are placed on the Commission for the protection of the broker against unjust accusations, harassment, expensive hearing costs for double defense if he has to answer to the Commission every time he attempts to collect a commission, or other bill due for his services? The real estate broker is a business man too, or woman. Is he to be discriminated against in that he will not be allowed to collect his bills?

The United States Court of Appeals has never construed the Real Estate and Business Chance Broker's License Act since it was enacted in 1937. It has noticed

the Act on only three occasions. This Court has never construed the Act. Act of August 25, 1937, c. 760 (50 Stat. 787). Since 1954, when initial review of orders of the Real Estate Commission was transferred from the District Court to the then Municipal Court of Appeals, there have been no cases in the United States Court of Appeals, or this Court.

Since transfer of initial review to the Municipal Court of Appeals in 1954 that Court has never had occasion to reverse an order of the Real Estate Commission. It has affirmed every license revocation or suspension reviewed by it. Can the Real Estate Commission be that perfect? Or, the District of Columbia Court of Appeals? Is this the proper forum for review? Usually the District of Columbia Court of Appeals has already passed on the merits of the case, as here, before the Real Estate Commission acts. Is the Real Estate broker being denied an unbiased review when the same Court that heard the Civil or Criminal, action before the Commission acted, and had already ruled against the petitioner?

Until now, all suspensions or revocation cases have concerned dishonest and fraudulent practices, Petitioner's case represents a new and substantial departure from this pattern. The Real Estate Commission and the court below (U.S. App. D.C.) both concede that petitioner acted in good faith throughout. From the Transcript at the hearing.

> "What penalty must you impose on a broker who acts in good faith . . . .", Commissioner Yochelson, T 64."

But in treating "good faith" as a defense, the court below skips over the real question. It assumes with-

out discussion that the statute was intended to regulate broker's accounting methods and that the scope of such regulations was coextensive with the purely civil obligations of brokers. The Commission's findings and the District of Columbia Court of Appeals both ignored *the fact that three properties were being managed under the same contract, and that the contract provided that petitioner deduct and withhold five (5%) percent of the gross rents and sales intake of monies under this management contract for her services.* The lack of "good faith" on the part of the Commission and the Court below is shown in the way they have twisted facts, deliberately contrary to the record. The Commission tried hard from June, 1958 (and long before that) until July 1963 (and are still trying) to find some way to frame charges against petitioner to get her license. It is time to expose their bad faith. The Court, D. C. App. said in its opinion:

"this appeal presents the following questions: (1) Did petitioner have the legal right to set off her claim to a commission against the rents account; and (2) Assuming petitioner acted in "good faith" is "good faith" a defense to a violation of Code Sec. 45-1408(g)

> "The short answer to the first question is that an agent who receives rent money from tenants is a trustee of such funds, and cannot set off a personal debt owed him by the principal against payments due under the trust. Equity treats the fiduciary as holding the res in a separate capacity."
>
> "Here the subject matter of the management agreement was Mrs. Everson Apartment building while the subject matter of petitioner's claim was another property governed by a separate contract. As such they were unrelated for the purpose of allowing petitioner to set off her claim against the rents account."

These were not separate and unrelated management contracts. This fact was called to the attention of the court and it refused to correct its error. Monies were used from rents on 2822 Wisconsin to pay trust payment to B. F. Saul on the Fairlawn property, rents from Fairlawn Property was used to pay first trust payments of 2816 Wisconsin Ave. Everson owned all three. Her cash down payments at purchase was small, her trusts high. The rents were carrying the properties. until 2816 became vacant and Everson refused to exercise her option to sell, but when a bill came in for one property and there were no rents from that property to pay the bill, it was paid from rents of the other property, with proper accounting between the different ledger account. The Commission and the Court below is saying petitioner should have managed Everson's properties free, that she did not have a right to deduct a 5% commission as provided for in the management agreement. How does the court get the phrase "management agreement" for the apartment house while the subject matter of petitioners claim was another property "governed by a separate contract.". There was one management agreement for all properties, separate and apart from the sales contract, which covered the sales contracts and the rents.

The statute says nothing about the manner in which a real estate broker shall render an accounting nor what may be, or may not be, set off. The statute only requires the broker "to account" and "to remit." It is the phrase "within a reasonable time" that gives point to the provision.

How then does revocation or suspension come to depend on the principle relied upon by the court below that "Equity treats the fiduciary as holding the res in

a separate capacity." Until now no court ever construed the Real Estate Business Brokers License Act as embracing obligations of a purely civil nature unless they involved fraud or dishonesty.

The basic question is whether the Act is going to be construed as authorizing withdrawal of a real estate broker's license for conduct which involves no dishonesty or fraud. Congress repeatedly promised that the Act was not so intended. Both the House and the Senate promised;"

> "The bill has been so drawn that no one who is competent and honest will be denied the right to engage in the real estate business . . ."

There is no warrant under our law for making an honest civil dispute the occasion for disciplinary action where no fraudulent or dishonest practice is involved.

In the light of this clearly stated purpose, Sec. 45-1408 (g) and the more general subsec (h) clearly embrace only fradulent and dishonest practices in accounting and remittance. Any construction that extends this statute to civil obligations not involving fraud and dishonesty has the effect of transferring ordinary civil disputes with brokers from the law courts to the Real Estate Commission.

The decision of the court below establishes the Real Estate Commission as a pre-trier of Civil litigation, cloaked with authority to determine when a broker may assert a civil claim, or, to severely punish him if he tries.

> "The value of constitutional privileges is largely destroyed if persons can be penalized for relying on them. It seems peculiarly incongruous and indenfensable for courts which exist and act only

> under the Constitution to draw inferences of lack of honesty from invocation of a privilege deemed worthy of enshrinement in the Constitution." Grunewald v. United States, 353 U.S. 391 (1957), concurring opinion, 425.

The Real Estate Commission has no published rules. (See Harrison, Licensing Procedures in the District of Columbia 8 (August, 1963) Journal of the Bar Association of the District of Columbia.) The findings in this record are plainly inadequate, are a mere repetition of the charges, and avoid the real issue.

The whole proceedings show a dreadful miscarriage of justice, both in the Real Estate Commission and the Courts. Nothing in the record supports reasons for the lasting injustice done to petitioner. Petitioner prays that the burden of this great injustice be lifted from her; that this honorable Court accept and review the truthful and factual declaration of the horrible and humiliating experiences petitioner was forced to endure by the District Corporation Counsel, the police and the Court, as well as the Real Estate Commission investigators during long investigation before and after the civil action on which this suspension of her brokers license was made, as given in *"Constitutional Rights and the Insanity Laws, Incarcerating the Sane,* by petitioner as a supplement to the record. Also the record is supplemented by petitioner's ledger records showing all receipts and disbursement on 2905-2907 Fairlawn Ave., S. E. being Ex. 1a, 1b, 1c and 1d.

CONCLUSIONS

Petitioner respectfully submits that the foregoing demonstrates the existence of a question of general importance and a question of substance not heretofore determined by this Court relating to the construction of the Real Estate and Business Broker's License Act, and the conduct of the Commission in its administration of the Act regarding the civil and constitutional rights of brokers, and that this Court should settle the question by granting the petition for a writ of certiorari.

SUSIE V. WATWOOD, *Petitioner pro se*
5112 MacArthur Boulevard, N. W.
Suite 103
Washington, D. C. 20016
Telephone 362-3246

APPENDIX

APPENDIX

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 3351

SUSIE V. WATWOOD, *Petitioner,*

v.

REAL ESTATE COMMISSION OF THE DISTRICT OF COLUMBIA, *Respondent.*

On Petition for Review of Decision of The Real Estate Commission of the District of Columbia

(Argued November 18, 1963 Decided January 8, 1964)

H. Keith Eisaman, with whom *Landon Gerald Dowdey* was on the brief, for petitioner.

David P. Sutton, Assistant Corporation Counsel, with whom *Chester H. Gray,* Corporation Counsel, and *Hubert B. Pair,* Assistant Corporation Counsel, were on the brief, for respondent. *Milton D. Korman,* Principal Assistant Corporation Counsel, also entered an appearance for respondent.

Before HOOD, Chief Judge, and QUINN and MYERS, Associate Judges.

QUINN, *Associate Judge:* This is an appeal from an order of the Real Estate Commission suspending petitioner's real estate broker's license upon a finding that she had violated Code Section 45-1408(g) and (h).[1]

---

[1] "The Commission * * * shall have the power to suspend or to revoke any license issued under the provisions of this chapter * * * where the licensee, in performing or attempting to perform any of the acts mentioned herein, has—

"(g) Failed, within a reasonable time, to account for or to remit any money, valuable documents, or ther property coming into his possession which belong to others;

"(h) Demonstrated such unworthiness or incompetency to act as a real-estate broker or real-estate salesman or a business-chance broker or a business-chance salesman as to endanger the interests of the public."

Briefly, the facts are as follows. Petitioner, pursuant to an agreement with Mrs. Cora Everson, assumed the duties of managing the latter's apartment building. Among other things, petitioner was to secure tenants, collect rents, and pay a certain trust obligation incurred by Mrs. Everson in the ownership of the property. During the month of May 1959 Mrs. Everson notified petitioner of her desire to terminate the agreement. The agreement provided for ninety days' notice. In June, before the termination date, petitioner sent Mrs. Everson an invoice claiming a broker's commission of $1,212.50 on the sale of another property owned by Mrs. Everson. To solidify her claim, petitioner deducted $1,212.50 in the June accounting and thereby refused to remit the balance on hand of $566.25 which would otherwise have been owing to Mrs. Everson. Subsequently, Mrs. Everson brought suit for the $566.25 and petitioner counter-claimed for the $1,212.50. The issues were submitted to a jury which returned a verdict in Mrs. Everson's favor and against petitioner on the counterclaim. We affirmed. *Watwood* v. *Everson,* D.C. Mun. App., 181 A.2d 469 (1962).

In 1963 the Commission filed charges against petitioner, held a public hearing and entered findings of fact. The most important finding stated in part:

> "* * * instead of making payments of the aforesaid obligations of Mrs. Everson and then remitting the balance to Mrs. Everson as per said agreement [petitioner], did convert to her own use the sum of $566.25."

Nevertheless, the $566.25 had been secured by a supersedeas bond and was promptly paid to Mrs. Everson at the conclusion of the litigation.

This appeal presents the following questions: (1) Did petitioner have a legal right to set off her claim to a commission against the rent account; and (2) Assuming peti-

tioner acted in "good faith," is "good faith" a defense to a violation of Code Section 45-1408(g)?

The short answer to the first question is that an agent who receives rent money from tenants is a trustee of such funds,[2] and cannot set off a personal debt owed him by the principal against payment due under the trust.[3] Equity treats the fiduciary as holding the res in a separate capacity.[4] Here the subject matter of the management agreement was Mrs. Everson's apartment building while the subject matter of petitioner's claim was another property governed by a separate contract. As such they were unrelated for the purpose of allowing petitioner to set off her claim against the rent account.

Petitioner contends that the answer to the second question is controlled by our statement that the purpose of the Real Estate Brokers' Act is "to protect the public against fraud in real estate transactions."[5] Petitioner would have us apply this statement so as to deny the Commission the

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[2] *Robbins* v. *Roumel*, D.C. Mun. App., 138 A.2d 922, 923 (1958); *Jay* v. *General Realties Co.*, D.C. Mun. App., 49 A.2d 752, 755 (1946).

[3] *Garrison* v. *Edward Brown & Sons*, 25 Cal 2d 473, 154 P.2d 377, 379 (1945) ("• • • a fiduciary cannot set off claims owed him in his personal capacity against obligations that he assumes as a trustee."); *First Nat. Bank of Waynesboro* v. *Johnson*, 183 Va. 227, 31 S.E.2d 581, 585 (1944) ("A trustee cannot set off against the trust fund held by him his individual demand against the creator of the trust."); *Wesolowski* v. *Erickson*, 5 Wis.2d 335, 92 N.W.2d 898, 902 (1958) ("• • • nor should one who is sued in his legal capacity as a representative of another be allowed to counterclaim on the basis of claims due him individually from the plaintiff.").

[4] *Topas* v. *John MacGregor Grant, Inc.*, 18 F.2d 724, 726 (2d Cir. 1927), cert. denied 274 U.S. 754.

[5] *Eberman* v. *Massachusetts Bonding & Ins. Co.*, D.C. Mun. App., 41 A.2d 844, 845 (1945).

power to revoke or suspend a license where a broker has acted in "good faith."[6] A review of the legislative history surrounding the act indicates that one of the intended grounds for revocation or suspension was "failure to account for money or property belonging to others."[7] In a comparable statute, it has been recognized that "bad faith" is not a prerequisite to violating a provision regarding commingling of funds.[8] In an analogous situation we have said that the question is whether the broker failed to give her principal that scrupulous fidelity which the law demands We hold, therefore, that petitioner's refusal to remit monies belonging to her principal constituted a violation of Code Section 45-1408(g).[10] Her "good faith" under these circumstances is not a defense but a fact to be considered in mitigation of punishment. In this regard we note that petitioner's suspension was only for thirty days.

Finally, we find no merit in petitioner's contention that her constitutional right of free access to the courts has been denied. Petitioner was never prevented from remitting the monies due Mrs. Everson and asserting her claim to the commission in a separate complaint. It was her choice of legal self-help which brought forth the Commission's charges. If anything, the successive appeals have underlined her right of free access to the courts.

Affirmed.

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[6] The record discloses that petitioner's claim was pursued upon the advice of a member of the bar.

[7] S.Rep. No. 1173, 75th Cong., 1st Sess. 3-4 (1937).

[8] *Hogg* v. *Real Estate Com'r*, 54 Cal. App. 2d 712, 129 P.2d 709, 712 (1942).

[9] *Jay* v. *General Realties Co.*, supra note 2; compare *St. Germain* v. *Watson*, 95 Cal. App. 2d 862, 214 P.2d 99, 103 (1950).

[10] Since there is substantial evidence to support the order of suspension under Code Section 45-1408(g), we have not proceeded to examine whether the order is similarly supportable under Code Section 45-1408(h). *Burch* v. *Board of Commissioners*, D.C. App., 191 A.2d 604 (1963).

REAL ESTATE COMMISSION OF THE DISTRICT OF COLUMBIA

IN THE MATTER OF

SUSIE V. WATWOOD, *Respondent*

Public Hearing No. 63-1

Order of Suspension

Upon consideration of the charges preferred herein, the evidence adduced at the public hearing on April 12, 1963, the findings of fact and the conclusion of law, and pursuant to the decision herein made, it is by the Real Estate Commission of the District of Columbia, this 17th day of July, 1963,

ORDERED:

That the license expiring February 29, 1964 issued by this Commission to Susie V. Watwood to act as a Real Estate Broker be, and the same hereby is, suspended for a period of thirty (30) calendar days commencing upon the sixteenth (16th) day following the date of service of a copy of this order of suspension upon the said Susie V. Watwood; provided, however, that if this Order is stayed pending the conclusion of any appeal or review proceedings under authority of law and the decision of this Commission is affirmed, the period of suspension shall begin immediately upon the final disposition of such appeal or review proceedings and shall apply to any license or licenses issued by this Commission to the said Susie V.

Watwood then in effect and to any subsequent license or licenses so issued.

REAL ESTATE COMMISSION OF THE DISTRICT OF COLUMBIA

SEAL

JOHN C. AHEARN
Acting Chairman

IRVING B. YOCHELSON
Member

FRANK M. DOYLE
Member

Filed April 8, 1964

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,412 September Term, 1963

DCCA No. 3351

SUSIE V. WATWOOD, *Petitioner*,

v.

REAL ESTATE COMMISSION OF THE DISTRICT OF COLUMBIA, *Respondent*.

Before: BAZELON, Chief Judge, FAHY and BASTIAN, Circuit Judge, in Chambers.

Order

On consideration of petitioner's petition for the allowance of an appeal from a judgment of the District of Columbia Court of Appeals, and of the briefs filed herein by petitioner and respondent, it is

ORDERED by the court that the petitioner's aforesaid petition is hereby denied.

PER CURIAM.

Dated: April 8, 1964

Filed May 22, 1964

Order

On consideration of petitioner's petition for reconsideration, it is

ORDERED by the court that petitioner's aforesaid petition is hereby denied.

PER CURIAM.

Dated: May 22, 1964

Filed May 22, 1964

Order

On consideration of petitioner's petition for reconsideration *en banc*, and of respondent's opposition thereto, it is

ORDERED by the court *en banc* that petitioner's aforesaid petition is hereby denied.

PER CURIAM.

Dated: May 22, 1964

Order

Filed January 28, 1964

DISTRICT OF COLUMBIA COURT OF APPEALS

Landon GeraldDowdey, Esquire
and H. Keith Eisaman, Esquire

Hubert B. Pair, Esquire
Asst. Corp. Counsel

The following action was this day taken by the Court in Case No. 3351.

WATWOOD v. REAL ESTATE COMMISSION

Motion to correct statement of fact in opinion and/or to modify judgment accordingly,—Denied.

C. NEWELL ATKINSON, *Clerk.*

Dated: January 28, 1964

SHEET NO. _____ ACCOUNT NO. _____ 9a

RATING 10 Unit Apartment Bldg. NAME Cora Eva Everson

CREDIT LIMIT 2905-7 Fairlawn Ave ADDRESS aft. 206- 2112 F. St. N.W.

TERMS

FORM NB-8 MADE IN U.S.A.

DATE	ITEMS	FOLIO	✓	DEBITS	DATE	ITEMS	FOLIO	✓	CREDITS
1958					1958				
Dec 31	Wash. D.C. Defense Bd		✓	2000	Dec 31	Cora E. Everson 2816 Wave		✓	32962
	Col. of Land Permit		✓	X 1000	"	1 Lino aft 5-2905 - 55.00 - 2.75		✓	5225
	Col. of Tex. DC - Lease Fee		✓	X 100	"	1 Hooper aft 4-2905 - 65.00 - 3.25		✓	6175
	B.F. Saul 8.1% Ly.		✓	X 86980	"	1 Marks aft 5-2907 - 51.00 - 2.55		✓	4845
	Wm. Kluesing 2nd Ly.		✓	X 7196	"	2 Hays aft 1-2907 - 65.00 - 3.25		✓	6175
	Wm. Kluesing Leases Ry.		✓	X 2350	"	2 Jelak aft 3-2905 - 61.00 - 3.05		✓	5795
				99626	"	3 Richard aft 4-2907 - 59.00 - 2.95		✓	5605
					"	4 Anderson aft 1-2905 - 63.00 - 3.15		✓	5985
					"	10 C. Cooper aft 2-2905 - 65.00 - 3.25		✓	6175
					"	29 F. Cooper aft 4-2905 - 65.00 - 3.25		✓	6175
					Dec 31	Bal Fwd to 1/1/59			14509
				99626					99626
1959					1959				
Jan 1	Bal.			14509	Jan 2	Hays aft 2-07 - 63.00 - 3.15	CR62	✓	5985
" 5	Wash. Gas & E.	CD53	✓	✓ 7033		Marks " 5-07 - 51.00 - 2.55	"	✓	4845
" 22	Wm. Kluesing 2nd Ly	CD53	✓	✓ X 27196	3	Craig - Forfeit Dep. - 50	"	✓	950
				28738	5	Jelak - aft. 3-05 - 61.00 - 3.05	"	✓	5795
						Richard " 4-07 - 59.00 - 2.95	"	✓	17475 5605
						Lane - aft 5-05 - 55.00 - 2.75	"	✓	6225
					6	Anderson aft 1-05 - 63.00 - 3.15	"	✓	5985
					12	Cooper aft 2-05 - 65.00 - 3.25	"	✓	35390 6175
					14	Neeah aft 1-07 - 65.00 - 3.25	"	✓	6175
						Chain meter Wake. 4.71 - 24	"	✓	4747
					26	Cooper aft 4-05 - 65.00 - 3.25	"	✓	47147 6175
					28	Lane - aft 5-05 - 55.00 - 2.75	"	✓	5225
					30	Hays - aft 2-07 - 63.00 - 3.15	"	✓	5985
					31	Boston aft 3- 481.84 - 190.00 - 6.52	"	✓	12350 7692
Jan 31	Bal. Cor. Fwd			28738	Jan 31	Bal. Cor. Fwd			76

ACCOUNT NO. _____ SHEET NO. _____

NAME Cora Eva Everson RATING

ADDRESS CREDIT LIMIT

2905-2907 Fairlawn Ave. L.C. 10 units TERMS

DATE 1959	ITEMS	FOLIO	✓	DEBITS	DATE 1959	ITEMS	FOLIO	✓	CREDITS
Jan 31	Bal. Br. Fwd			28738	Jan 31	Bal. Br. Fwd		✓	76922
Feb 19	Work Fan L.C.	C057	✓✓	18243	Feb 2	Morton apt 5-2907	9.51 CR56	✓	4845
				46981	✓3	Jelch apt 3-05	61.00	✓	6795
Mar 16	G. Bowe - Paint from loan for apt 5-2907	80	✓ X	1788	✓4	Reichert " 4-07	59.00	" ✓	5605
Mar 2	Wm Klinebard - 2nd St.	C059	✓ ✓	7196	✓9	Anderson " -05	65.00	" ✓	5985
" 4	O.C. Treasurer - Water Bill	"	✓ ✓	4786	✓9	C.F. Corfor 2-05	65.00	" ✓	6175
	Potomac Elec. Co - Electric	"	✓ ✓	2175	✓14	Hecht. -07	65.00	" ✓	6175
" 12	B.F. Laud 1st Jr. note	"	C ✓ X	89778	Jan ✓1	Cora E. Everson 2816 mtge	86.81 55.70	✓	878
	1 John R. Colbert Jr. 1st J. note on 2816 mtge	"	✓ ✓ X	15000	Mar ✓2	Dairy - apt 5-05	2.71	CR58 ✓	5225
	19 Wm Klinebard 2nd St.	"	✓ ✓ X		✓	J Corfort 2-05	65.00	" ✓	6175
				174920	Mar ✓3	Hayes apt 2-07	63.00	" ✓	5985
					✓	Jelch apt 3-05	61.00	" ✓	5795
					✓	Reichert apt 4-07	59.00	" ✓	5605
					Mar ✓5	Hecht apt 1-07	65.00	" ✓	6175
					" ✓11	Bowe - apt. 5-	2.97	" ✓	1425
					" ✓12	C.F. Corfor apt 2-05	65.00	" ✓	6175
					" ✓12	Anderson apt 1-05	63.00	" ✓	5985
					" ✓16	Bowe - apt. 5-07	2.25	" ✓	1907
					" ✓	" " Bal Rent	80	✓ X	1788
					" ✓31	Dairy apt 5-05	2.71	CR58 ✓	5225
					" ✓19	Cora E. Everson		CR58	7100
					" ✓27	J. Corfor apt 2-05	65.00	CR58 ✓	6175
Apr ✓2									18437
	Reichert apt 4-07						59.00	CR60 ✓	5605 ✓
✓	Jelch apt 3-05							" ✓	5795 ✓
Apr ✓6	Hayes apt 2-07						63.00	" ✓	5985 ✓
" ✓8	City water Wall							" ✓	948 ✓
" ✓13	Anderson apt 1-05							" ✓	5985 ✓
" ✓16	C.F. Corfor apt 2-05							" ✓	6175 ✓
" ✓20	Hecht apt 1-07							" ✓	6175 ✓
	Bal Cor Fwd			174920		Bal. Cor. Fwd			223105
									223105

SHEET NO. _____ ACCOUNT NO. _____

RATING

CREDIT LIMIT

TERMS

NAME Love Eva Everson

ADDRESS 2905-2907 Fairlawn Ave S.E.
10 Units

FORM N2-B — MADE IN U.S.A.

DATE 1959	ITEMS	FOLIO	✓	DEBITS	DATE 1959	ITEMS	FOLIO	✓	CREDITS
Apr. 20	Bal. Br. Ford			174920	Apr. 20	Bal. Br. Ford		✓	223105
Apr. 8	Wash. Gas L.C. Heat	CR61	✓ ✓	7166 85 ✓	" 21	Barnes-apt 5-07		55.00 2.75 CR60	5225 ✓
" 13	Potomac E. P.C. Lights	"	✓ ✓	20 72 ✓	" 28	J. Carper-apt 4-05		65.00 3.25 "	234175 ✓
" 13	Wash. Gas L. C. Heat	"	✓ ✓	15584 ✓	May 1	Bain-apt 5-[illegible]		55.00 2.75 CR66	5225
" 13	John J. Webster-Plumb. Repr.	"	✓ ✓	2625 ✓	" 4	Hayes-apt 2-07		68.00 3.15 "	5985
" 13	Jos. A. Warnick " "	"	✓ ✓	3375 ✓		Gulch-apt 3-05		61.00 3.05 "	5795
" 13	Nat. Equipment Mfg. Co.					Reichert-apt 4-07		57.00 2.85 "	5415
" 27	Gen. Refrigeration Refilled		✓ ✓	306 ✓	May 11	Anderson-apt 1-05		63.00 3.15 "	5985
" 29	Wm Klinehart-2nd L.	CR63	✓ ✓	7196 "		J.F. Carper-apt 2-05		65.00 3.25 "	61775
" 30	Odds apts 1937-2907			"	" 20	Barnes-apt 5-07		55.00 2.75 "	5225
	Fairlawn Ave. 61 kits @ $82			3538 ✓	" 25	Watson-apt 3-07		20.00 1.00 "	1900
				226301	" 30	Barnes-[illegible]		[illegible]	27[illegible]
Reichert May 4	Jamitor Service Cleaning material	CR64	✓ ✓	1500 ✓ May	1881	Bal. March 16, 1959		✓	7585
		"	✓ ✓	228 ✓	June 1	Hayes-apt 5-07		63.00 3.15 CR68	27[illegible] 75
May 5	Wash. Gas L. C.	CR65	✓ ✓	9750		Klein-apt 5-05		55.00 2.75 "	5985
" 18	Klinehart-2nd L.	"	✓ ✓	7196		Watson-apt 3-07		45.00 2.25 "	5225
" 21	Bal. Elec. Power &	CR65	✓ ✓	1057	2	Reichert-apt 4-07		57.00 2.85 "	4275
" 27	Capital Elec. Power & Light 3-05	"	✓ ✓	1044	4	Gulch-apt 3-05		61.00 3.05 "	5605
	" " Lawn Mower	"	✓ ✓	1388		Hecah-apt 1-07		65.00 3.25 "	5795
				2[illegible] 8465	10	Anderson-apt 1-05		68.00 3.15 "	6175
May 1	as of 3/17/59 Bal. Beneficial Mtg. 1st Install Payment L.	L-85	(a) ✓	Correct Paid 2[illegible] 130	June 17	Hecah-apt 1-07		65.00 3.25 CR68	5985
	V.F. Lael.			2[illegible] 8594	26	Barnes-apt 5-07		55.00 2.75 "	6175
June 2	Janitor apt 2907-Rockett	CR68	✓	500 "				566.16	5225
" 10	Janitor-apt 2905-Anderson	"	✓	500					3249 20
" 26	Plumbing Repairs apt 3-07	"	✓	Note 400					
" 17	DC Gas Co. Water Bill	CR69		3652					
" 29	John J. Webster Plumb. Repr.	CR69	✓	2825					
	Potomac Elec. Power Co. Lights	"		1364					
	Wash. Gas L. & Heat	"	✓	12469					
				27030					
				6616					
Dec. 31	To 1/1/60			326920					326920

ACCOUNT NO. _____ SHEET NO. _____

NAME Cora Eva Emerson RATING

ADDRESS 2905 - 2907 Fairlawn ave. SE CREDIT LIMIT

TERMS

DATE	ITEMS	FOLIO	✓	DEBITS	DATE	ITEMS	FOLIO	✓	CREDITS
1961 Dec 31	To 1/1/62			56616	1960 Jan 1	Bal.			56616
1962 July 2	as of Nov. 1961 - mdse				1962 Jan 1	Bal			56616
	& Gr. Court order	J105		3124	Oct 18	Cora E. Emerson	J16		9793
~~Oct 18~~	~~Court award to~~					~~Int 4.79 Court 87.18~~			~~66409~~
	~~Cora Eva Emerson~~	~~J16~~		~~5000~~					
	~~Interest~~	~~J16~~		~~4793~~					
Oct 18	Cora Eva Emerson	J16		63285					
				66409					66409

I, Susie V. Watwood, being first duly sworn, under oath, do solemnly declare that the factual contents of the foregoing petition for writ of certiorari are true to the best of my knowledge and belief; that the Real Estate Commission Records and the Opinion below in this case are inaccurate and incomplete; and that neither the Real Estate Commission, the Police, nor the Corporation Counsel office has shown me a sworn statement from any person whatsoever; I further declare that I am being persecuted by these departments, and through them, by others unknown to me; that because if this persecution and interference with my employment in Government, in private employement, and in my self employment as a Real Estate Broker I have often gone hungry, have seen my mother die in agony for lack of adequate medical attention, been unable to pay my just debts, been publicly humiliated, arrested by and injured by manhandling police on untrue traffic charges and a disorderly charge for resisting arrest; that my life has been threatened many times anonymously over the telephone; that when appearing in Municipal Court for the District of Columbia in an orderly, dignified and calm manner with an attorney before Judge Howard I was denied a hearing on the traffic accident. Judge Howard, at the request of the Corporation Counsel, whom I had to my knowledge, never seen, summarily held a sanity inquisition at which the police including one officer Dutch who has a $100,000 libel suit pending against me for my testimony regarding his conduct and exposure at the time of the traffic charges and injury to me in 1955, and the other, the guilty party in the accident, swore against me. I was sent to D. C. General Hospital maximum security ward for where I was forced to take all the tests for sanity, was found sane and released in ten days.

I further declare that all of the facts given in my treatise "Constitutional Rights and The Insanity Laws—Incarcerating The Sane" are true.

I further declare that I have been denied due process of law in civil cases before the several courts in the District

of Columbia; that I have been denied the right by the courts to collect just debts due me; all protection to my person and property and that; because of former such court rulings against me including in *Watwood* v. *Credit Bureau and Watwood* v. *Stone Mercantile Agency,* I have been at the mercy of these two credit investigating and reporting agencies and that they have shown no mercy, but have continued to give untrue and derogatory information about me detrimental to my reputation and business; and that suits as a result, have been deliberately instigated against me and was repeated because the general statement given out by court personnel, attorneys and these agencies are: "She has established a record in suits in the courts and lost every one of them. She won't win this one." Everything I earn, own, or expect to earn or own will be taken from me if I cannot stop this situation. My attorneys and witnesses are always sabotaged.

In view of the above I further declare, as to my personal life, I am the third child in a family of nine children. As a small child I worked in the fields with my parents, brothers and sisters, I felt the scorching sun, the cooling breeze, waded in babbling brooks, sought shelter from the rain under the great spreading limbs of thick leaved trees, listened to the songs of birds, peeped into their nests of speckled eggs, saw them feed their young; watched the yellor green buds from the bursting seeds push through the ground, the storm clouds, the clear star studded sky at night, Haleys comet, and all the wonders of God in nature. Although we were poor financially we were rich in these things. On Sundays we went to church. My mother taught me to respect my mind and body as a temple in which God placed my soul; that sex was for the purpose of, procreation of God in man, was a noble thing, and not to be defiled. I have adhered to her teachings.

My formal education ended in Junior High school. At sixteen I became the head breadwinner for my semi-invalid mother and my five younger brothers and sisters. I at-

tended night school, took correspondence courses, private instructions and pursued a course of self study. I have always been active in church and civic matters. I have held above the average positions in both private business and in government for a woman, and have a profitable business established but in some way I have been horribly, horribly framed by derogatory information on my personnel and credit records. By what, or how, or whom I do not know. I only know that my employment has constantly been interfered with; that I have had threats "that I would be run out of town", would "be fixed", and that I would "be killed.", and some attempts have been made to do this.

On January 27, 1940 I became the innocent victim of an illegal marriage to one Jacob M. Cohen. This caused me much heart ache and embarrassment. In trying to get an annulment of divorce, lawyers filed the wrong type of suits which complicated the situation further. Milton Korman, a member of the Corporation Counsel's office of the District of Columbia then, and still is was counsel for Mr. Cohen. He used his position then and still is using it, to hurt me. There were no children by that marriage. To my great regret I have never given birth to a child. I have not let this unfortunate incident lower my moral standards or my outlook on life. My mind has always been healthy. I have no history of mental illness whatsoever. I have never taken one penny or any thing from any one that did not belong to me.

The herewithin affidavit and the petition for writ of certiorari are made because of my desperate need to secure relief from interference with my means of earning a living and the need to conserve what resources I have or may have from my earnings. I am now sixty-two years of age.

Signed: SUSIE V. WATWOOD

Subscribed and sworn to before me, a notary public in and for the District of Columbia, this 16 Day of October, 1964.

L. S. WHEELER (SEAL)

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FILED
NOV 18 1964
JOHN F. DAVIS, CLERK

BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 604

SUSIE V. WATWOOD, *Petitioner,*

v.

REAL ESTATE COMMISSION OF THE DISTRICT OF COLUMBIA, *Respondent.*

On Petition for a Writ of Certiorari to The United States Court of Appeals for the District of Columbia Circuit

CHESTER H. GRAY,
Corporation Counsel, D. C.
HUBERT B. PAIR,
Assistant Corporation Counsel, D. C.
Attorneys for Respondent,
District Building,
Washington, D. C. 20004

Of Counsel:

DAVID P. SUTTON,
Assistant Corporation Counsel, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 604

SUSIE V. WATWOOD, *Petitioner*,

v.

REAL ESTATE COMMISSION OF THE DISTRICT OF COLUMBIA, *Respondent*.

On Petition for a Writ of Certiorari to The United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The orders of the United States Court of Appeals for the District of Columbia Circuit denying the petition for allowance of an appeal, the petition for reconsideration and the petition for reconsideration *en banc* appear in the appendix to petitioner's brief at pp. 6a, 7a.

The opinion of the District of Columbia Court of Appeals is reported at 196 A. 2d 635, and a copy thereof appears

in the appendix to petitioner's brief at p. 1a. The order of the District of Columbia Court of Appeals denying petitioner's motion to modify the court's judgment appears in the appendix to petitioner's brief at p. 7a.

JURISDICTION

The judgment of the District of Columbia Court of Appeals was entered January 8, 1964 (Petitioner's Appendix, p. 1a). The order of the District of Columbia Court of Appeals denying petitioner's motion to modify the judgment, filed January 20, 1964, was entered January 28, 1964 (Petitioner's Appendix, p. 7a). The petition for allowance of an appeal was filed in the United States Court of Appeals for the District of Columbia Circuit February 6, 1964 (Respondent's Appendix, p. 1). The order of the United States Court of Appeals for the District of Columbia Circuit denying the petition for allowance of an appeal was entered April 8, 1964 (Petitioner's Appendix, p. 6a). The orders of the United States Court of Appeals denying reconsideration and reconsideration *en banc* were entered May 22, 1964 (Petitioner's Appendix, p. 7a).

The petition for a writ of certiorari was filed October 19, 1964, and the jurisdiction of this Court is sought to be invoked under 28 U. S. C. § 1254.

QUESTION PRESENTED

Where the United States Court of Appeals for the District of Columbia Circuit has denied discretionary review of a case arising out of the enforcement of a law of purely local application, absent any showing of egregious error, is this case of the class of cases which this Court will review on writ of certiorari?

COUNTER-STATEMENT OF THE CASE

Following a public hearing as provided in District of Columbia Code, 1961, § 45-1409, respondent, upon a finding

that petitioner had violated Code § 45-1408 (g) and (h),[1] entered an order suspending for a period of 30 days her Real Estate Broker's license.

After review by the District of Columbia Court of Appeals, as permitted by District of Columbia Code, 1961, § 11-772 (e) (9), the order of suspension was, on January 8, 1964, affirmed (Petitioner's Appendix, p. 1a).

More than 10 days after the entry of the judgment of the District of Columbia Court of Appeals, petitioner, on January 20, 1964, filed a motion entitled "Motion to Correct Statement of Fact in Opinion and/or to Modify Judgment" (R. 110). On the ground, among others, that the motion was filed beyond the time permitted by District of Columbia Court of Appeals Rule 27 (p),[2] respondent opposed the motion (R. 117). By order entered January 28, 1964, the District of Columbia Court of Appeals denied the motion (Petitioner's Appendix, p. 7a), and, on February 6, 1964, petitioner filed in the United States Court of Appeals for the District of Columbia Circuit a petition for allowance of an appeal,[3] which was, on April 8, 1964, denied (Respondent's Appendix, p. 1; Petitioner's Appendix p. 6a).

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[1] "The Commission * * * shall have the power to suspend or to revoke any license issued under the provisions of this chapter * * * where the licensee, in performing or attempting to perform any of the acts mentioned herein, has— * * *

"(g) Failed, within a reasonable time, to account for or to remit any money, valuable documents, or other property coming into his possession which belong to others;

"(h) Demonstrated such unworthiness or incompetency to act as a real estate broker or real-estate salesman or a business-chance broker or a business-chance salesman as to endanger the interest of the public * * *."

[2] Such rule provides that: "Motions for rehearing or for modification of the order, opinion, or judgment of this court may be filed within 10 days after the date thereof." January 18, 1964, was neither a Sunday nor a legal holiday.

[3] District of Columbia Code, 1961, §§ 11-321 (b) and 17-103 (Supp. III) provide that: "A party aggrieved by a judgment of the District of Columbia Court of Appeals may seek a review thereof by the United States Court of Appeals for the District of Columbia Circuit by petition for the allowance of an appeal," and that such petition shall be filed "* * * within ten days after entry of the judgment from which an appeal is desired."

Thereafter, a petition for reconsideration and a petition for reconsideration *en banc* were denied (Petitioner's Appendix, p. 7a) and, on August 19, 1964, petitioner filed in this Court a petition for a writ of certiorari to review the action of the United States Court of Appeals for the District of Columbia Circuit.

REASON WHY WRIT SHOULD BE DENIED

No case is presented calling for the exercise of this Court's jurisdiction to review on writ of certiorari.

The jurisdiction of the Supreme Court to review on writ of certiorari is clearly defined by 28 U. S. C. § 1254, which provides in pertinent part that:

> "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> "(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree * * *."

Inasmuch as the United States Court of Appeals denied the petition to it for allowance of an appeal from the judgment of the District of Columbia Court of Appeals, it is quite apparent that this case was never *in* a court of appeals for purposes of review on writ of certiorari under 28 U.S.C. § 1254, *supra*. See *Ferguson* v. *District of Columbia*, 270 U. S. 633, 46 S. Ct. 355, 70 L. Ed. 771, where a petition for a writ of certiorari to review the order of the Court of Appeals of the District of Columbia (now the United States Court of Appeals for the District of Columbia Circuit) denying a writ of error to the Police Court of the District of Columbia was denied by the Supreme Court for want of jurisdiction under § 240 of the Judicial Code, as amended by the Act of February 13, 1925, Chap. 229, § 1 (a), 43 Stat. 938 (now 28 U. S. C. § 1254).

But even if this case can be considered a case in the court of appeals within the purview of 28 U. S. C. § 1254, *supra*, it is crystal clear from the record that the court below was without jurisdiction to review it since the petition for allowance of an appeal was filed beyond the time permitted by District of Columbia Code, 1961, § 17-103 (Supp. III), *supra*. And because the requirements of such section are mandatory and jurisdictional petitioner could not, by filing out of the time prescribed by District of Columbia Court of Appeals Rule 27 (p), *supra*, a "Motion to Correct Statement of Fact in Opinion and/or to Modify Judgment," cause to commence to run again the time within which to petition the United States Court of Appeals for allowance of an appeal. See *McIntosh* v. *United States*, 70 F. 2d 507 (4th Cir.). See also and compare *United States* v. *Robinson, et al.*, 361 U. S. 220, 80 S. Ct. 282, 4 L. Ed. 2d 259; *Allegrucci* v. *United States*, 372 U. S. 954, 83 S. Ct. 950, 9 L. Ed. 2d 978.

Manifestly, no more is involved in the instant case than a controversy arising out of the enforcement of a law of purely local application and significance. Under such circumstances, absent a clear showing of egregious error, and here there is no such showing, this Court has consistently refused to exercise its jurisdiction. See *American Security and Trust Co.* v. *District of Columbia*, 224 U. S. 491, 32 S. Ct. 553, 56 L. Ed. 856; *Del Vecchio* v. *Bowers*, 296 U. S. 285, 56 S. Ct. 190, 80 L. Ed. 229; *District of Columbia* v. *Pace*, 320 U. S. 698, 702, 64 S. Ct. 406, 88 L. Ed. 408; *United Surety Co.* v. *American Fruit Product Co.*, 238 U. S. 140, 35 S. Ct. 828, 59 L. Ed. 1238; *Griffith* v. *United States*, 336 U. S. 704, 718, 69 S. Ct. 814, 93 L. Ed. 993, rehear. den. 337 U. S. 921, 69 S. Ct. 1152, 93 L. Ed. 1730; *Fisher* v. *United States*, 328 U. S. 463, 66 S. Ct. 1318, 90 L. Ed. 1382, 166 A. L. R. 1176.

What, therefore, is abundantly clear is that no question of substance is presented which falls within the ambit of Rule 19 (b) of the Rules of this Court.

Without any basis in the record or in logic, petitioner has sought to inject in the case constitutional questions, but as this Court said in *United Surety Co.* v. *American Fruit Product Co., supra,* at 238 U. S. 142:

> "* * * The constitutional point is a mere pretext put forward in order to open other questions that otherwise could not come here. * * *"

CONCLUSION

For these reasons and others apparent in the record, it is respectfully submitted that petitioner has failed utterly to demonstrate a right to review by this Court on writ of certiorari. The petition should, therefore, be denied.

Respectfully submitted,

CHESTER H. GRAY,
Corporation Counsel, D. C.
HUBERT B. PAIR,
Assistant Corporation Counsel, D. C.
Attorneys for Respondent,
District Building,
Washington, D. C. 20004

Of Counsel:

DAVID P. SUTTON,
Assistant Corporation Counsel, D. C.

APPENDIX

[Filed February 6, 1964]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUSIE V. WATWOOD, *Petitioner* v. REAL ESTATE COMMISSION OF THE DISTRICT OF COLUMBIA, *Respondent.*	No. 18,412

PETITION FOR ALLOWANCE OF AN APPEAL

Petition is hereby made by Susie V. Watwood for allowance of an appeal from the judgment of the District of Columbia Court of Appeals entered on the 8th day of January, 1964, Motion to Correct Statement of Fact in Opinion and/or to Modify Judgment Accordingly denied January 28, 1964, in a cause entitled *Susie V. Watwood* v. *Real Estate Commission of the District of Columbia,* No. 3351, in said District of Columbia Court of Appeals, in favor of Real Estate Commission of the District of Columbia against said Susie V. Watwood.

* * * * *

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 604

SUSIE V. WATWOOD, *Petitioner*

v.

REAL ESTATE COMMISSION OF THE DISTRICT OF COLUMBIA, *Respondent*

PETITIONER'S ANSWER TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUSIE V. WATWOOD, *Petitioner pro se*
5112 MacArthur Boulevard, N.W.
Washington, D. C. 20016

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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OCTOBER TERM, 1964

No. 604

SUSIE V. WATWOOD, *Petitioner*

v.

REAL ESTATE COMMISSION OF THE DISTRICT OF COLUMBIA, *Respondent*

PETITIONER'S ANSWER TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Respondent's citation of *Ferguson* v. *District of Columbia,* 270 U.S. 633, 46 S. Ct. 355, 70 L. ed. 771, where a writ of error to the Police Court of the District of Columbia was sought under the Jurisdiction of Sec. 240 of the Judicial Code as amended by Act of February 13, 1925, Chap. 229, Sec. 1(a), 43 Stat. 938, is not controlling in appellant's petition. (Respondent's Brief p. 4)

Section 17-103, D.C. Code, 1961 ed., Act of Mar. 2, 1897, 29 Stat. 607, ch. 360; Mar. 3, 1901, 31 Stat. 1225, ch. 854, Sec. 227, related to appeals from police court and is now obsolete. Supp. 111, 1964 is a new law, dealing with appeals from the District of Columbia Court of Appeals.

It will be observed that January 18, 1964, the tenth day after the entry of judgment District of Columbia Court of Appeals was a Saturday. Therefore under FRCP 6(a) as amended January 21, 1963, effective July 1, 1963, petitioner had until the following Monday, January 20, to make her filing. This rule is by its terms applicable "in computing any period of time prescribed or allowed by these rules . . . by order of court, or by any applicable statute."

Therefore the motion to modify filed January 20 was within the statutory ten-day period allowed by *Sec. 16-773, D. C. Code, 1961 ed., or 17-103 Supp. 111, (1964).*

Sec. 16-774 of the D. C. Code, 1961 ed., requires the District of Columbia Court of Appeals to conform its practice to the Federal Rules. *Rule 44(c)** of that court's Rules allow twelve days to file a motion for rehearing or modification The seeming conflict with Rule 27(p) is reconciled in *Kyle* v. *Wiley,* D. C. Mun. App., 78 A. 2d 769. There it is pointed out that, in effect, two days are to be added to practically all the times specified in Rule 27. *Rule 10(b)* of this court's Rules provides that where notice is by mailing "2 days from the date of mailing shall be added to the pre-

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* The mandate of this Court shall issue on the 12th day after entry of judgment unless a motion for rehearing or modification is filed, in which event the mandate shall be stayed until 12 days after disposition of such motion.

scribed period." But whether the time for filing be ten or twelve days, Monday, January 20, was within the time allowed, the tenth day being a Saturday.

The Clerk below therefore acted properly in receiving the motion to modify.

The Constitutional questions presented by petitioner are grave and serious. This Court's decision will affect the real estate commission acts of the 50 States as well as the District of Columbia.

Cases cited in Respondent's Brief pages 4, 5, and 6, have no similarity to appellant's case.

CONCLUSION

Wherefore it is respectfully submitted that respondent's answers and argument are without merit. Appellant has demonstrated a right to review by this Court on Writ of Certiorari. The petition should, therefore, be granted.

Respectfully submitted,

SUSIE V. WATWOOD, *Petitioner pro se*
5112 MacArthur Boulevard, N.W.
Washington, D. C. 20016